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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,905	04/20/2001	Kenichiro Kobayashi	KIK01 P322	1673

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EXAMINER

SUN, XIUQIN

ART UNIT PAPER NUMBER

2863

DATE MAILED: 08/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/838,905

Applicant(s)

KOBAYASHI, KENICHIRO

Examiner

Xiuqin Sun

Art Unit

2863

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 05 June 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-17.


Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

Continuation of 5. does NOT place the application in condition for allowance because: 1.) The applicant argue that the prior art fail to teach "removing the Fourier-transforming means". Newman teaches a method for directly sensing speckle patterns of a moving object without the use of a Fourier-transforming lens (col. 2, lines 11-21, lines 24-35; col. 6, lines 6-16 and col. 8, lines 47-59). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the teaching of Newman lensless sensing technique in the Rose system in order to eliminate the need of complex and expensive optical components such as lenses in measuring the movement of an object in non-contacting fashion (Newman, col. 8, lines 53-59).

2.) The applicant argue that the prior art fail to teach "the combination as set forth in the Office Action dated 12/02/02 does not provide for a method wherein an object is moved toward or away from a detector". The combination as set forth in the Office Action provides for an apparatus and method of detecting and measuring the movement of an object towards or away from a detector. It is inherent and obvious that one would move the object towards or away from the detector when operating the apparatus and method to conduct the detection for the movement. More specifically, Kinrot et al. talk about moving a surface toward or away from a measurement device in carrying out a non-contact optical measurement of velocity and translation of the surface with respect to the measurement device (col. 2, lines 48-56; col. 19, lines 53-55; col. 24, lines 20-44; col. 29, lines 16-20; col. 34, lines 36-46; col. 36, lines 47-51; and col. 43, line 63 to col. 4, line 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the teaching of Kinrot in the Rose system in order to carry out the method for detecting the movement of an object toward and away from the detector in non-contacting fashion.

3.) The applicant emphasis that "there is no suggestion or motivation either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to combine the reference teachings". This argument is not persuasive. The Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. The Examiner further recognizes that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Specifically, in this case, it is obvious that the inclusion of the teaching of Newman lensless sensing technique in the Rose system is motivated by the need to eliminate the complex and expensive optical components such as lenses in measuring the movement of an object (Newman, col. 8, lines 53-59). It is also identified that the combination of the teaching of Kinrot into the Rose system is suggested by Kinrot (col. 2, lines 48-65) in order to carry out the method for detecting the movement of an object toward and away from the detector with increased measurement dynamic range and accuracy. It is further identified that the inclusion of the teaching of Omura light shield section in the Rose system is motivated by the need to prevent, wherever required, any noise light from entering a line sensor (Omura, Abstract and Constitution). It is further identified that a recognition member for image recognition using a line-sensor is widely known in the art (Kashiwagi, Abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the Kashiwagi line sensor in the combination of Rose and Omura in order to provide for a line sensor that can be fitted into a cylindrical tube and rotate around for high accuracy image recognition (Kashiwagi, Abstract; col. 5, lines 12-34 and col. 7, lines 47-53).

  
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